

**United States Department of Labor
Employees' Compensation Appeals Board**

A.M., Appellant

and

**U.S. POSTAL SERVICE, REDONDO BEACH
POST OFFICE, Redondo, CA, Employer**

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**Docket No. 07-1430
Issued: October 16, 2007**

Appearances:
Linda Temple, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 1, 2007 appellant, through his representative, filed a timely appeal of a January 24, 2007 nonmerit decision of the Office of Workers' Compensation Programs, denying his request for reconsideration. Because more than one year has elapsed between the most recent merit decision dated November 7, 2005 and the filing of this appeal, the Board lacks jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

The issue is whether the Office properly denied appellant's request for a merit review of his claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On December 9, 2004 appellant, then a 43-year-old city carrier, filed a claim for an occupational disease.¹ On October 12, 2004 he first became aware of his panic and general anxiety disorders. On November 26, 2004 appellant first realized that these conditions were caused by error and abuse by his supervisors at the employing establishment. In a letter dated December 29, 2004, the employing establishment controverted the claim.

By letter dated January 10, 2005, the Office advised appellant that the evidence submitted was insufficient to establish his claim. It addressed the additional factual and medical evidence he needed to submit to establish his claim.

Appellant submitted several documents including, narrative statements in which he alleged that David J. Azolas, a supervisor, harassed him. He contended that Mr. Azolas made offensive comments about his personal life, work injuries and work performance. Appellant also alleged that the employing establishment issued unwarranted disciplinary letters regarding his work performance and behavioral conduct.

Statements from appellant's coworkers stated that they witnessed him being harassed by Mr. Azolas. A statement from his customer witnessed his distraught condition and the emergency medical treatment he received while working on his route. Statements from the employing establishment and appellant's coworkers denied his contention that he was harassed by Mr. Azolas. The employing establishment stated that the disciplinary action taken against appellant was warranted. Medical records addressed appellant's emotional condition and disability for work.

By decision dated June 30, 2005, the Office denied appellant's claim. It found that appellant failed to establish that he sustained an emotional condition in the performance of duty. The Office determined that appellant had not established any compensable factors of his employment. In addition, the Office found that he failed to submit medical evidence to establish a causal relationship between his emotional condition and his employment.

In an undated letter, received by the Office on October 31, 2005, appellant requested reconsideration. He contended that his emotional condition and thumb injury were work related. Statements from appellant's coworkers indicated that they witnessed appellant being harassed by Mr. Azolas.

By decision dated November 7, 2005, the Office denied modification of the June 30, 2005 decision. It found that the evidence submitted by appellant was insufficient to establish a compensable employment factor.

¹ Prior to the instant claim, on January 15, 2002 appellant filed a traumatic injury claim assigned file number 13-2045829) for a back injury he sustained at work. On September 9, 2004 he filed a claim for an occupational disease assigned file number 13-2123087. Appellant alleged that his left thumb infection was caused by his employment. By decision dated November 26, 2004, the Office denied appellant's claim.

On October 27, 2006 appellant requested reconsideration. He submitted a March 22, 2006 medical report of Dr. Nicholas M. Halikis, a Board-certified orthopedic surgeon, who found that appellant developed paronychia infections in both thumbs and that, when he last evaluated him on November 11, 2004, this condition had resolved. Dr. Halikis opined that appellant had a recurrent problem with his thumbs which was caused by his employment as a mail carrier. He stated that repetitive grasping of mail with his thumb put pressure on the perionychia which traumatized this area and made it susceptible to infection. An October 13, 2006 report of Cliff Sabath, Ph.D., a licensed psychologist, opined that appellant sustained panic and generalized anxiety disorder as a result of being harassed by Mr. Azolas.

In a January 24, 2007 decision, the Office denied appellant's request for reconsideration on the grounds that it did not include new and relevant evidence and thus it was insufficient to warrant a merit review of the Office's prior decisions.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128 of the Federal Employees' Compensation Act,² the Office's regulation provides that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.³ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.⁴ When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review of the merits.

ANALYSIS

On October 27, 2006 appellant disagreed with the Office's June 30 and November 7, 2005 decisions, which denied his claim for an emotional condition after finding that he had not established a compensable employment factor. The relevant issue in this case is the factual question of whether appellant has established a compensable factor of employment.

In support of his request for reconsideration, appellant submitted Dr. Halikis' March 22, 2006 report which found that his recurrent paronychia infection in both thumbs was caused by his employment as a mail carrier. Dr. Sabath's October 13, 2006 report found that appellant sustained panic and generalized anxiety disorder as a result of being harassed by Mr. Azolas. The Office, however, is not required to consider medical evidence in an emotional condition case where no work factors have been established.⁵ The medical reports, consequently, are not

² 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, [t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application. 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.606(b)(1)-(2).

⁴ *Id.* at § 10.607(a).

⁵ See *Richard Yadron*, 57 ECAB ____ (Docket No. 05-1738, issued November 8, 2005).

relevant to the underlying issue in this case, which is the factual question of whether appellant has established a compensable employment factor. The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.⁶

Appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office or constitute pertinent new and relevant evidence not previously considered. As he did not meet any of the necessary regulatory requirements, he is not entitled to further merit review.⁷

CONCLUSION

The Board finds that the Office properly denied appellant's request for a merit review of his claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the January 24, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 16, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

⁶ *Patricia G. Aiken*, 57 ECAB ____ (Docket No. 06-75, issued February 17, 2006).

⁷ *See* 20 C.F.R. § 10.608(b); *Richard Yadron*, *supra* note 5.